

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r" and 2009 Iowa Acts, Senate File 457, division IV, the Iowa Finance Authority proposes to adopt new Chapter 34, "Disaster Recovery Housing Project Tax Credits," Iowa Administrative Code.

The purpose of these rules is to implement 2009 Iowa Acts, Senate File 457, division IV, by instituting and regulating the operation of a Disaster Recovery Housing Project Tax Credit program.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed rules until 4:30 p.m. on October 13, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

These rules are intended to implement Iowa Code section 16.5 (1)"r" and 2009 Iowa Acts, Senate File 457, division IV.

The following amendment is proposed.

Adopt the following **new** 265—Chapter 34:

CHAPTER 34

DISASTER RECOVERY HOUSING PROJECT TAX CREDITS

265—34.1(16,83GA,SF457) Purpose. A disaster recovery housing project tax credit (hereafter referred to as disaster tax credit) for construction or rehabilitation of housing on the property located in an area that the governor proclaimed a disaster emergency or the President of the United States declared a major disaster during the period of time beginning May 1, 2008, and ending August 31, 2008, is granted to approved projects, subject to availability of the credit, to apply against income tax imposed under Iowa Code chapter 422, divisions II and III. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under United States Internal Revenue Code Section 42.

265—34.2(16,83GA,SF457) Definitions. The following definitions apply:

"*Applicant*" means the person, business, or corporation applying for the tax credit.

"*Authority*" means the Iowa finance authority.

"*Disaster recovery housing project*" means an eligible property located in an area declared a disaster area by the governor of Iowa, or a major disaster area by the President of the United States, during the period of time beginning May 1, 2008, and ending August 31, 2008.

"*Educational services*" means training and educational offerings, including, but not limited to, public schools, job training, and financial literacy services.

"*Qualifying investment*" means costs incurred by the taxpayer that are directly related to a disaster recovery housing project, and which are incurred on or after May 12, 2009, and prior to July 1, 2010.

"*Tax basis*" means the same as defined in Internal Revenue Code Section 42(d).

"*Tax credit year*" means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax credits for an eligible project.

265—34.3(16,83GA,SF457) Eligible properties. A property shall be eligible for disaster tax credits if it meets all of the following conditions:

1. The property is owned by a taxpayer who is an individual, business, or corporation subject to taxation under Iowa Code chapter 422, division II or III;
2. A qualifying investment is made by the taxpayer;
3. The project involves the construction or rehabilitation of housing on the property;
4. The property is located in an area that the governor of Iowa proclaimed a disaster emergency or the President of the United States declared a major disaster during the period of time beginning May 1, 2008, and ending August 31, 2008;
5. An application for low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code has been submitted to the authority on behalf of the project and has been determined by the authority to meet the threshold requirement for an award of credits as set forth in the applicable qualified allocation plan;
6. The project meets the requirements relating to the density of residential housing in the area as established by the authority in the applicable qualified allocation plan;
7. The project meets the requirements relating to the availability of and the accessibility to educational services as established by the authority; and
8. The project is designed to avoid, prevent, or mitigate the effects of a future natural disaster.

265—34.4(16,83GA,SF457) Eligible taxpayers.

34.4(1) The following are eligible to receive a disaster tax credit:

- a. An individual may claim a tax credit belonging to a partnership, limited liability company, S corporation, estate, or trust which elects to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.
- b. A business.
- c. A corporation.

34.4(2) The taxpayer must attach one or more tax credit certificates to the taxpayer's tax return.

265—34.5(16,83GA,SF457) Application and review process.

34.5(1) The authority shall issue tax credit certificates on a first-come, first-served basis. The taxpayer shall provide the authority with the following:

- a. Information showing the total qualified investment made in the disaster recovery housing project.
- b. Information about the financing sources that are directly related to the disaster recovery housing project for which the taxpayer is seeking approval for the tax credit.

34.5(2) Disaster recovery housing project tax credit certificates issued by the authority shall state:

- a. The taxpayer's name;
- b. The taxpayer's address;
- c. The taxpayer's tax identification number;
- d. The amount of the credit;
- e. The expiration date of the credit (the last day of the taxable year for which the taxpayer is claiming the tax credit); and
- f. Any other information required by the department of revenue.

265—34.6(16,83GA,SF457) Tax credit funds. The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the authority shall not exceed \$3 million in each of the five consecutive tax years beginning in the 2011 calendar year.

265—34.7(16,83GA,SF457) Abandonment and recapture of tax credit reservation. The tax credit shall be void and the department of revenue shall seek recovery of the value of the tax credit received if a taxpayer who has received a tax credit fails to comply with either of the following:

1. The requirements of this chapter or of Iowa Code section 16.191, or
2. Local zoning and construction ordinances.

265—34.8(16,83GA,SF457) Transfer of tax credit certificates. Tax credit certificates shall not be transferable to any person or entity.

265—34.9(16,83GA,SF457) Reduction in basis. For purposes of individual and corporate income taxes, the increase in the tax basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed under this chapter.

265—34.10(16,83GA,SF457) Redemption of tax credit certificate. The amount of tax credit calculated under Section 42(m)(2) of the United States Internal Revenue Code shall be divided by five and an amount equal thereto shall be subtracted from the taxpayer's Iowa tax liability for five consecutive tax years commencing with the tax year beginning on January 1, 2011. Any tax credit in excess of the taxpayer's liability for the tax year shall not be refundable.

265—34.11(16,83GA,SF457) Tax credits in excess of tax liability. An applicant whose tax credits exceed the tax liability in the tax year for which the tax credit may be redeemed is not entitled to a refund of excess tax credit.

265—34.12(16,83GA,SF457) Application processing fee. A nonrefundable fee for application will be charged by the authority. The fee shall be 1 percent of the total five-year tax credit amount.

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 457, division IV.